
Q: What does this amendment do?

A: This amendment restores the power of Congress to protect the flag from physical desecration. It does not ban anything. Congress and the states had this power before two misguided Supreme Court decisions. The Constitution was created by the people, not the Courts. In the United States the people are sovereign, and by passing this amendment we will let the people decide.



Q: Does this amend the First Amendment?

A: No. We ratified the First Amendment in 1789. For 200 years states and the federal government provided protection for the American flag without ever imagining those laws conflicted with the First Amendment. The question here is not whether we are amending the First Amendment. The question is who should prevail when the courts get it wrong—the judges or the people?

Q: Do we really need this amendment?

A: Even one instance of flag desecration is one too many. If Americans want to protect their flag, they should have this right.

Q: Isn't this legislation too vague?

A: This contention is smoke and mirrors. This is an amendment, not a statute. Only by restoring the power of Congress to protect the flag can we then have a debate about what the precise conditions of that protection will be. All this amendment does is restore to Congress a power that it always had. Should the people ratify this amendment we will no doubt have a healthy debate over the parameters of a flag protection statute. This will be no different than any other debate over legislation in Congress.

Q: Is a statute sufficient?

A: Prior to 1989, the states had broad flag protection measures. The Congress passed a similarly broad measure, supported by 91 Senators, but a severely divided Court overturned that as well. The Court will likely find even current, narrower proposals unconstitutional. In 1989, Congress believed that it had the power to pass a broad flag protection measure consistent with the Constitution. We should restore that power through this amendment.

The Congress shall have power to prohibit the physical desecration of the flag of the United States.

BACKGROUND INFORMATION

Texas v. Johnson (1989): 5-4 decision holding flag burning is politically expressive conduct protected by First Amendment. Overturned 48 state laws and the District of Columbia's flag protection statute.

U.S. v. Eichman (1990): 5-4 decision overturning the Flag Protection Act of 1989; passed in response to Johnson (Senate vote, decision 91-9). Eichman was decided on grounds similar to Johnson.

In response to these decisions, all 50 states have petitioned Congress to protect the flag.

Congress has considered Constitutional amendments to remedy these decisions and restore the Constitution since 1989. The House has passed this amendment in each of the last five Congresses. The Senate voted on this amendment in 1995 and 2000. 63 Senators voted for the amendment on both occasions.

Currently there are 60 bipartisan cosponsors of this amendment. Counting those who have expressed support, we appear to be only one vote short of the 67 necessary to send this to the states for ratification.

